

DOROTHY SHELBY
Claimant

THE BOEING COMPANY - WICHITA
Respondent

AETNA CASUALTY & SURETY COMPANY
Insurance Carrier

KANSAS WORKERS COMPENSATION FUND

ORDER

APPEARANCES

RECORD AND STIPULATIONS

ISSUES

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board finds that none of the Award should be assessed against the Workers Compensation Fund. The decision by the Administrative Law Judge should be affirmed.

Issues between respondent and claimant were settled at a hearing held September 30, 1993. The issues between the Fund and respondent were, thereafter, litigated and submitted to the Administrative Law Judge for decision. The Administrative Law Judge entered an Award on March 20, 1995 finding that the Workers Compensation Fund was not liable for any portion of the Award.

The present claim involves injury to claimant's right shoulder and right upper extremity during the period April 16, 1991 to April 16, 1992. Claimant had injured her left shoulder in 1988. The condition in her left shoulder was diagnosed as chronic bursitis with a frozen left shoulder. Respondent contends that it retained claimant in its employ with knowledge of a preexisting handicap, the 1988 injury, and further contends that the injury to the right shoulder in 1991 would not have occurred but for the injury to the left. Respondent, therefore, asks for a hundred percent (100%) reimbursement from the Fund for all amounts paid in this claim.

There is no real disagreement that respondent had knowledge of claimant's 1988 injury and resulting impairment. The dispute here focuses instead on whether the 1988 injury to the left shoulder had a significant relationship to the injury on the right.

Respondent rests its argument largely on the history reflected in the Boeing Central Medical records. The records of April 30, 1991 state: "Left shoulder froze up 2 to 3 years ago, since then has used the right arm and shoulder do [sic] most of the work." The Appeals Board finds, however, the history in the records is outweighed by claimant's testimony to the contrary. Claimant testified that after the injury in 1988, she underwent approximately two (2) weeks of physical therapy after which she did not have any significant problems, had no restrictions and was essentially pain free. She insisted the injury in 1988 did not alter the manner of her work. She further states that she is right-hand dominant and tended to do most of her work on her right regardless of the injury to the left. Finally, she describes the injury in 1991 as having started with a specific event on April 16, 1991 when a bur caught, the tool she was operating flipped, and her shoulder popped.

There is, in fact, a confusing inconsistency between the history reflected in the records and claimant's testimony. The Appeals Board, however, finds claimant's testimony convincing. The Appeals Board, therefore, finds that the 1991 injury to the right shoulder would have occurred regardless of the injury to the left and further finds that the injury to the left shoulder did not contribute to the disability resulting from the 1991 injury.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark dated March 20, 1995 should be, and the same is hereby affirmed.

IT IS SO ORDERED.

Dated this ____ day of August, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Vaughn Burkholder, Wichita, Kansas
John C. Nodgaard, Wichita, Kansas
John D. Clark, Administrative Law Judge
Philip S. Harness, Director